

LEONARD K. HOWELL  
10957 Valle Vista Road  
Lakeside, CA 92040-1729  
(619) 300-8977

PLAINTIFF, Pro Se

FILED

08 JUN 16 PM 12:39

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

'08 CV 1060 J WMC

UNITED STATES DISTRICT COURT  
for the  
SOUTHERN DISTRICT OF CALIFORNIA

LEONARD K. HOWELL  
dba Howell's RV,

Plaintiff,

vs.

WASHINGTON MUTUAL BANK,  
a Federally-Chartered thrift institution,  
Defendant.

Civil Case No. \_\_\_\_\_  
VERIFIED COMPLAINT FOR DAMAGES  
1. Claim for Recovery of  
Bank Deposit  
2. Claim Against Bank for  
Aiding and Abetting a Fraud  
DEMAND FOR JURY TRIAL

I.

1. This is an action for recovery of funds on deposit with the Defendant, bank and for recovery of actual, compensatory and punitive damages from the bank based on gross negligence by the bank which aided and abetted a fraud perpetrated on the Plaintiff.

II.

PARTIES

2. Plaintiff, LEONARD K. HOWELL ("Plaintiff") is and was at all times relevant to this action, an individual residing in the City of Lakeside, County of San Diego, California.

3. At all times relevant to this action,, Defendant, WASH-

CR

1 WINGTON MUTUAL BANK ("Defendant") was and is a federally-chartered  
2 thrift institution, whose principal office is located in the  
3 State of Washington, USA.

4 III.

5 4. This action is based on diversity of citizenship between  
6 the parties, in that the Plaintiff, LEONARD K. HOWELL is a resident  
7 and citizen and resident of the State of California, USA; the De-  
8 fendant, WASHINGTON MUTUAL BANK, whose principal office is located  
9 in the State of Washington, USA is, for diversity purposes, consid-  
10 ered to be a citizen of that state.

11 5. This court has subject matter jurisdiction over this action  
12 based on diversity of citizenship, pursuant to the provisions of  
13 28 U. S. C. 1332(a) and (c), since the amount in controversy is  
14 in excess of \$75,000.00.

15 6. Although, under the Federal Rules of Civil Procedure,  
16 venue is a matter of Affirmative Defense and need not be pleaded,  
17 Plaintiff alleges that this US District Court for the Southern  
18 District of California is the proper forum for adjudication of  
19 the issues involved in this case, in that the Plaintiff, LEONARD  
20 K. HOWELL is both a citizen and resident of the State of California  
21 and the Defendant, WASHINGTON MUTUAL BANK regularly does business  
22 in the State of California, as provided by 28 U.S.C. 1391(c)

23 IV.

24 GENERAL ALLEGATIONS

25 7. On or about February 5, 2005, Plaintiff was notified,  
26 by telephone, that he had won \$4.2K in the Canadian Lottery.

27 8. He was also told that he must pay, in advance, the sum of  
28 \$42,000 for taxes in order to receive his prize winnings from the  
lottery.

1           9. On or about May 20, 2005, Plaintiff received a Snap-On  
2 Tool Company check, dated May 1, 2005, in the amount of \$299,720.40.  
3 made payable to HOWELLS RV.

4           10. Plaintiff took this check to the Defendant, Washington  
5 Mutual Bank and deposited same to his business checking account  
6 at the bank for collection in the regular course of banking busi-  
7 ness. The check was paid by the drawee bank and the sum of  
8 \$299,720.40 was credited to Plaintiff's checking account.

9           11. On June 14, 2005, Washington Mutual Bank made a wire trans-  
10 fer of \$190,000 of the Sanp-On Tool check that had been previously  
11 credited to Plaintiff's checking accoun to a recipient bank in  
12 San Jose, Costa Rica, Central America.

13           12. Shortly thereafter, Washington Mutual Bank was notified  
14 that the Snap-On Tool Company check was a forgery in that the name  
15 of the true payee on that check had been changed and altered.

16           13. Washington Mutual Bank was debited for the loss of  
17 \$190,000 under its collecting bank warranties. The bank then  
18 passed along the loss by a debit to the Plaintiff's business  
19 checking account which caused an overdraft of teh account of  
20 approximately \$128,000.

21           14. At the time the Defendant, Washington Mutual Bank overdrew  
22 Plaintiff's business checking account there were funds on deposit  
23 in that account belonging to the Plaintiff of approximately  
24 \$65,000 which the bank converted and used to reduce its loss from  
25 this wire fraud.

26           15. In September, 2005, the additonal sum of approximately  
27 \$2,200 was taken from another account which Plaintiff had at the  
28 Defendant, Washinton Mutual Bank and transferred to the wire fraud

1 which the bank converted and used to further reduce its loss from  
2 the wire fraud.

3 As a result of the bank's gross negligence, by the actions  
4 of its responsible employee's in failing to protect the Plaintiff,  
5 its depositor, from this easily detectable wire fraud, and con-  
6 verting and using funds of the Plaintiff to reduce the bank's loss  
7 from this wire fraud, the Plaintiff seeks relief by his claim for  
8 conversion of funds and actual, compensatory and punitive damages  
9 for the actions of the bank, through its employees, for aiding and  
10 abetting a fraud.

11 V.

12 CLAIMS FOR RELIEF

13 COUNT I

14 Conversion of Depositor's Funds

15 16. Plaintiff repeats and realleges the allegations of pre-  
16 ceding paragraphs 7 through 15 and incorporates them by reference  
17 as though fully set forth herein.

18 17. Plaintiff seeks recovery from the Defendant, Washington  
19 Mutual Bank, of deposits belonging to Plaintiff at the bank in  
20 the approximate sum of \$65,000 which the bank converted and used  
21 to reduce its loss from the wire fraud perpetrated on the Plain-  
22 tiff, which through proper actions by responsible employees of  
23 the bank could have been prevented.

24 18. Plaintiff also seeks recovery by way of a proper credit  
25 to his business checking account to eliminate an overdraft of  
26 approximately \$128,000 which the bank is attempting to collect  
27 from the Plaintiff.

28 19. Plaintiff also seeks recovery from the Defendant, Wash-

1 ington Mutual Bank, of the sum of approximately \$2,200 belonging  
2 to the Plaintiff which were on deposit at the bank in another  
3 account from which the bank converted and transferred to the wire  
4 fraud account to further reduce its loss from this wire fraud.

5 COUNT II

6 Recovery of Damages for Aiding and Abetting  
7 a Wire Fraud by the Defendant, Washington Mutual  
8 Bank

9 20. Plaintiff repeats and realleges the allegations of  
10 preceding paragraphs 7 through 19 and incorporates them by refer-  
11 ence as though fully set forth herein.

12 21. Plaintiff seeks recovery of actual, compensatory and pun-  
13 itive damages from the Defendant, Washington Mutual Bank, resulting  
14 from the gross negligence of its responsible employees in failing  
15 to protect its depositor from this easily detectable Canadian wire  
16 fraud.

17 VI.

18 PRAYER

19 WHEREFORE, plaintiff demands judgment agaonst the Defendant,  
20 Washington Mutual Bank for the following:

21 1. Conversion of funds of the Plaintiff in the sum of  
22 approximately \$67,200.00;

23 2. Elimination of an oaverdraft in Plaintiff's business  
24 checking account of approximately \$128,000 caused by the wire  
25 transfer of funds by the bank from that account;

26 3. Actual, compensatory and punitive damages according to  
27 proof;

28 4. Interest, as provided by law;

5. Costs of this action

6. And such other and further relief as the Court may deem  
just in the cause.

VII.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on the merits of his claims against the Defendant, Washington Mutual Bank.

VERIFICATION

I declare, under penalty of perjury, that I have read this Complaint, that I am thoroughly familiar with the allegations thereof, which are true and correct and that, as to those allegations made on information and belief, if any, I believe them to be true.

Dated: 6-16-08.

Leonard K. Howell  
Leonard K. Howell, Plaintiff, Pro Se

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

*LEONARD K. HOWELL*  
*AAA HOWELL'S RV*

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

*Prose*

## DEFENDANTS

*WASHINGTON MUTUAL BANK WASHINGTON*

County of Residence of First Listed Defendant STATE OF WASH  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

*08 CV 1060 J DEW WMC*

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |  |   |  |
|---|--|---|--|
| Citizen of This State                   | PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4    |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2                    | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3                    | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input checked="" type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>LABOR</b>	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<b>IMMIGRATION</b>	<b>FEDERAL TAX SUITS</b>
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

*28 U.S.C. 1332(a)*  
*WIFE FRAUD ON P. AND A BETTER BY BANK. (CONVERSION OF BANK DEPOSIT)*

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ *195,000*  
*plus interest*

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

*08 CV 1060 J WMC*

DATE *6/16/08* SIGNATURE OF ATTORNEY OF RECORD *Leonard K. Howell*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_